

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:

*County of Monroe, Michigan v.  
Purdue Pharma L.P., et al.,  
Case No. 18-op-45158*

MDL No. 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster  
Magistrate Judge David Ruiz

**MOTION TO DISMISS BY DEFENDANTS  
CVS HEALTH CORPORATION, THE KROGER CO., RITE AID CORPORATION,  
RITE AID OF MARYLAND, INC., D/B/A RITE AID MID-ATLANTIC CUSTOMER  
SUPPORT CENTER, WALGREENS BOOTS ALLIANCE, INC., AND WALMART INC.**

Defendants CVS Health Corporation, The Kroger Co., Rite Aid Corporation, Rite Aid of Maryland, Inc., d/b/a Rite Aid Mid-Atlantic Customer Support Center, Walgreens Boots Alliance, Inc., and Walmart Inc. (collectively the “Moving Defendants”) move to dismiss the Second Amended Complaint in the above-captioned action pursuant to Rules 12(b)(1), 12(b)(6), and 9(b) of the Federal Rules of Civil Procedure. The Second Amended Complaint (“Complaint”) must be dismissed for the following reasons:

1. Plaintiff lacks Article III standing to bring its claims because it alleges only harm that is common to the general public and derivative of harm incurred by third parties.
2. The Complaint purports to state claims against the Moving Defendants in their capacities as distributors, not dispensing pharmacies, and any claims against the Moving Defendants as dispensing pharmacies are insufficient under pleading rules.
3. Michigan’s Drug Immunity Statute bars Plaintiff’s common law claims.

4. Plaintiff fails to state any claims on which relief can be granted. The Complaint fails to allege facts showing that the Moving Defendants: (1) violated the Michigan Consumer Protection Act; (2) negligently distributed prescription opioids; (3) created a public nuisance through their lawful distribution of a highly regulated product; (4) received any benefit from Plaintiff that constitutes unjust enrichment; (5) committed any fraud; or (6) engaged in a civil conspiracy.

For these reasons, and as set forth more fully in the accompanying memorandum and in the memorandum submitted by Defendants McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Drug Corporation, the Second Amended Complaint must be dismissed.

Dated: June 8, 2018

Respectfully submitted,

/s/ Eric R. Delinsky

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 8, 2018, the foregoing was filed using the Court's CM/ECF filing system and will be served via the Court's CM/ECF filing system on all attorneys of record.

/s/ Eric R. Delinsky  
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